The respondents submitted that for the purpose of calculating the monthly wage the case came under section 6(1)(c) of the Ordinance. The amount shown to have been paid as wages, vide exhibit B. was $16.10, and it was submitted by the respondents' counsel that the proper monthly wage under section 6(1)(c) was $16.10, multiplied by 30 divided by 51 (the number of days of the period 3rd September to 23rd October).

[245] [245] The first point taken by myself as Commissioner, was whether in view of the explanation to section 6 the period of 51 days was "continuous." The explanation reads as follows:—

> "A period of service shall for the purpose of this section be deemed to be continuous which had not been interrupted by a period of absence from work exceeding 14 days."

It appears from exhibit B. that though the total absence from work in the period was 19 days there was no continuous absence from work in excess of 5 days. In *C.M. Agarwala's* edition of the Indian Workmen's Compensation Act, 1923 (1924) the learned author states "the explanation itself is not very happily worded as it does not tend to make it clear whether a period of absence from work required to break the continuity of a period of service must itself be a continuous period of 14 days or not." Section 6(1)(c) of our Ordinance and the explanation are both copied from the Indian Act. Mr. Agarwala does not answer the query put by himself above but he suggests that the period of 14 days must be continuous in order to break the continuity of the period of service. I agree with this suggestion because otherwise I think that paragraph (c) of section 6(1) would in a vast majority of cases be nugatory. There would be few cases in which over a period of months the workman had not absented himself from work for a total of 14 days by way of leave taken for periods of 1, 2 or 3 days at a time.

For the above reasons I think that in this case the last continuous period of service immediately preceding the accident was the period 3rd September to 23rd October, i.e. 51 days. The only other point raised was an ingenuous argument put up by Mr. Handy, the Extra Assistant Controller of Labour based on section 8(4) of the Labour Ordinance. Under that section the employer is bound to provide 24 days work in any one month for a labourer; to quote the words in the sub-section: "If the employer shall fail to provide work for the labourer he shall pay to the labourer in respect of every day on which he shall so fail wages at the same rate as if the labourer had performed a day's work; provided that such wages when added to wages payable for work performed, shall not exceed in the aggregate the amount of 24 days' wages." Mr. Handy in effect asked me to hold that the total wages earned by the applicant (within the meaning of section 6(1)(c) of the Workmen's Compensation Ordinance) were the wages which he might have been paid had he insisted on his rights under section 8(4) of the Labour Ordinance or in other words that the total wages earned were 24 days' pay in respect of each month.

I regret that I am unable to accept this interpretation of the meaning of the expression "total wages earned." The ordinary meaning is quite clear. Wages earned appear to me to mean wages due in respect of work done and I decline to call in aid the provisions of section 8 of the Labour Ordinance in order to hold that "wages earned" has an entirely different meaning to its ordinary meaning. I do not deny that circumstances might arise in which one might have to turn to section 8(4) of the Labour Ordinance in order to ascertain the meaning of average wage in section 6(1)(b) but in view of the fact that section 6(1)(c) is easily intelligible without referring to any other Ordinance I prefer to attach to section 6(1)(c) of the Workmen's Compensation Ordinance its ordinary plain meaning. I therefore hold that the monthly wage of the workman is as submitted by counsel for the respondents, i.e.

$$\frac{30 \times \$16.10}{50} = \$9.47, \text{ say } \$9.50.$$

It is admitted that this is a case of partial permanent disability amounting to 50 per cent and the amount payable therefore will be:

$$\$9.50 \times \frac{42}{2} = \$199.50$$

The sum of $199.50 has been paid into my office by the respondents and will be paid out to the applicant on his application. There will be no order as to costs.

Order accordingly.

Solicitors: *Rodyk & Davidson.*

Re SYED HASHIM BIN KASSIM, DECD., late SULTAN OF SIAK

TUNGKU KECHIL MUDA SYED SAGOFF & ORS. v. SHERIFF KASSIM BIN HASHIM, SULTAN OF SIAK & ORS.

[O.C.J. (Adrian Clark J.) September 24, 1936]
[Singapore Suit No. 930 of 1922]

Estate Duty Ordinance, ss.23(1) and 26 — Burden of Estate Duty — By whom it should be borne.

A testator bequeathed property to his trustees with directions to distribute the income during a period represented by 12 named lives and 20 years after the death of the last survivor of them among many beneficiaries in certain shares of certain percentages of the whole. Upon the death of any beneficiary provision was made in the will for the redistribution of his share of income among certain others of the beneficiaries. Upon the arrival of the date of distribution provision was made for the conversion into money of all the estate of the testator and for its final distribution.

Two of the beneficiaries died and their shares in the income became redistributable among certain other beneficiaries; in consequence of which deaths estate duty was claimed by the Collector of Estate Duties and was in fact paid. The question thereupon arose whether this money paid for estate duty should be borne by the corpus of the testator's residuary estate or whether it [246] should be borne by the annuitants benefiting by the cessor of the respective life interests. [246]

Held: that the estate duty should be deducted from that portion of the capital of the whole estate which was deemed to have passed upon the cessor of the respective life interests and that any part thereof was payable out of income.

Held also: that any annuitant benefiting by the cessor of a life interest is not liable to pay any part of such estate duty but is liable to refund to the trustees the difference between the total amount of any income paid to him, between the date of death of any deceased annuitant and the date

on which estate duty is actually paid in connection with such death, and the amount of income which should have been paid to him during that period had the estate duty been paid punctually on the date of such death.

ADJOURNED SUMMONS.

Laycock for all plaintiffs except No. 5 (life tenants).

Williamson for the plaintiff No. 5 (a life tenant).

Munro for the trustees.

C. C. Tan for J. C. Cobbett, representative of remaindermen.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Adrian Clark J.: By a Summons No. 426 of 1936 the present trustees of the late Sultan of Siak applied for directions, *inter alia,* as to the manner in which certain estate duty should be provided for.

The testator left a will which, although it presented no real difficulties of construction, contained lengthy and detailed dispositions of his property.

The main disposition bequeathed the property of the testator to trustees with directions to distribute the income during a period represented by 12 named lives and 20 years after the death of the last survivor of them, among many beneficiaries in certain shares of certain percentages of the whole.

Upon the death of any beneficiary provision was made in the will for the re-distribution of that share among certain others of the beneficiaries.

Upon the arrival of the date of distribution provision was made for the conversion into money of all the estate of testator and for its final distribution.

For the purposes of this decision I think this summary of the provisions of the will is sufficient.

The date of distribution has not yet arrived but, meanwhile, two of the beneficiaries in the distribution of income have died and their respective shares have become redistributable among certain other beneficiaries.

In consequence of these deaths further estate duty has been quite properly claimed by the Collector of Estate Duties and that estate duty has in fact been paid.

Whether or not the amount paid was the correct amount is not in issue before me. It has been suggested that the Collector, in making his claim, did not calculate it on the basis laid down in the Estate Duty Ordinance, but it has not been suggested that the trustees acted otherwise than properly and for the benefit of the estate as a whole in arriving at some compromise with the Collector of Estate Duties or in paying the estate duty as and when they did.

The amount paid included interest on the amount of estate duty assessed, such interest having become due under section 26 of the Estate Duty Ordinance, 1929, owing to delays in payment which occurred without any negligence on the part of the trustees.

I am thereupon asked to direct "whether or what part of any sums paid or to be paid by the trustees as estate duty and interest on estate duty upon the cessor of any life interest under the will of the testator should be borne by the corpus of the testator's residuary estate and whether or what part of such sums should be borne by the annuitant or annuitants benefiting by such cessor."

In argument the following cases were cited to me:—

In re Parker-Jervis, [1898] 2 Ch. 643; *Berry* v. *Gaukroger,* [1903] 2 Ch. 116; *In re Palmer,* [1916] 2 Ch. 391; *In re Tattersall's Settlement,* [1918] 2 Ch. 243; *In re Cassell,* [1927] 2 Ch. 275; *In re Northcliffe,* [1929] 1 Ch. 327; *Dunderdale's Trustees* v. *Inland Revenue,* [1936] Sc. L.T. 253; and, *Christie & Ors.* v. *Lord Advocate,* [1936] 1 All E.R. 443. I have also studied again that well known authority *Re Cowley's Estate,* [1898] 1 Q.B. 355; and have referred to *In re Countess of Orford,* [1896] 1 Ch. 257; and *In re Avery,* [1913] 1 Ch. 208.

I cannot pretend that a study of the Estate Duty Ordinance in the light of these authorities has convinced me of the clarity of the provisions of this statute or of the unanimity of judicial opinion on the proper construction of the kindred provisions of the Finance Act of 1894.

It is at least clear that the duty is a duty payable on that proportion of the *capital* value of the trust property in the benefits of which a new beenficiary obtains rights through the death of some former beneficiary, however limited in time the rights of the new beneficiary may be. Estate duty is not a succession duty; the State does not tax the value of the benefit which the new beneficiary acquires, but claims a percentage of that portion of the corpus of the property which is deemed to have passed merely because there has been a change, caused by death, in the recipient or recipients of the benefits of that property or in the amount of benefit which he or they already derived from it.

It is also clear that the estate duty is a charge on the property itself and not a mere debt owing by the executor or by the beneficiary to the Crown.

[247] For purposes of convenience in collecting the duty, the property that passes is included in the aggregated value of the estate of the person who has died, even though his death has brought to an end any beneficial interest which he himself possessed in that property. [247]

That, however, is a matter of administrative convenience. It would obviously be inequitable where property is settled by *X* on *A* for life and thereafter on *B* that *A's* estate should finally have to bear the estate duty payable on the property and that *B* should enjoy it free of that burden. The scheme of the law is therefore that *B* should obtain his benefit in the property only after it has been diminished by the percentage that the State seized as it was passing.

The main difficulty in construing the Ordinance consists in ascertaining the true meaning of section 23(1) especially if it be compared with the provisions of section 22(2).

I think the meaning of section 23(1) can best be explained by a concrete example. *T*, the testator, devises his estate to trustees in trust to pay the net income for life to *A* and after *A's* death to pay the net income to *B* for life subject to retaining thereout an annuity of $100 payable to *X* so long as both *B* and *X* are alive. When *T* dies *A* will only receive the net income of the estate after the capital value of it has been reduced by the amount paid for estate duty. When *A* dies, estate duty will again have to be paid on the remaining corpus so that *B* will receive a net income proportionately diminished through the reduction of the capital by the amount then paid as estate duty. Now it would not be equitable that *X* should in these circumstances receive his $100 annuity undiminished and unaffected by the payment of the estate duty consequential on *A's* death. The Ordinance, by section 23(1), therefore, provides that *X* must bear his share of the diminution in value in the same proportion as $100 is to the total net income which was available for distribution at the moment of *A's* death (that is, before estate duty was paid on *A's* death).

I think, on the whole, that the various cases cited are merely examples of the *method* by which the Courts have attempted to put that principle into practice.

In this case that position does not arise. The income released by the deaths of the two life tenants passes wholly to other life tenants included in the same group of beneficiaries under the will and this income passes uncharged to third parties, but diminshed by the fact that that portion of the corpus which produces such income itself is diminished by the fresh amount due and payable for estate duty.

The estate duty payable will not be deducted from the whole capital of the estate but merely from that portion of it which is deemed to have passed. It is only the beneficiaries in the actual group entitled to share in the income released who will indirectly bear the effects of the reduction in the corpus. Beneficiaries in other groups will not suffer any diminution in the amounts of their annuities.

A concrete example may serve to make the point clear. *X* leaves property which, after payment of estate duty produces a trust capital of $300,000. By the terms of the trust the net income from this capital is to be divided for 20 years among two groups of beneficiaries; the income of two-thirds is $200,000, equally among *A, B, C, D* and *E* and the income on one-third, that is $100,000, equally among *F, G, H, I* and *J*. On the death of any of these within the 20 years period his share of income is to be distributed among the survivors of his group.

The trust estate is producing a nett income at the rate of 5%. Each of *A, B, C, D* and *E* therefore received an annuity of $2,000 and each of *F, G, H, I* and *J* an annuity of $1,000. *J* then dies within the period of 20 years. He had been receiving a fifth of the income on $100,000, i.e., $20,000 of the total capital of $300,000 is therefore deemed to have passed. Assume estate duty to be payable at the rate of 10 per cent., that is to say $2,000. This $2,000 cannot be debited to the total capital of $300,000 but only to the $100,000 fund or, strictly speaking, to the $20,000 which produced *J's* income.

A, B, C, D and *E* will continue to receive $2,000 per annum as hereto-fore. *F, G, H* and *I* will not, however, receive $250 per annum additional to their former $1,000 but only one-fourth each of the income from $20,000 less $2,000, that is, $225 each.

To this extent they bear the burden of the increased estate duty during their enjoyment of their annuities.

Eventually the cumulative effect of successive payments of estate duty as successive lives fall in will be borne by the residuary beneficiaries.

I trust that this interpretation is correct even if all the authorities cited to me may not really be consistent with such a construction of our Ordinance.

In any event, among the cases cited before me the decision in *In re Northcliffe* appears to me to be the most in point; it is a decision which has never been questioned; it has been consistently followed by the Courts in several recent cases; it has been cited with approval by text book writers; with the reasoning of it I am in agreement; and I am therefore prepared to follow it.

That disposes of the point as to the manner in which the estate duty itself has to be paid. There remains the question of the interest payable to the Collector of Estate Duties for the period between the date of the death and the date of the actual payment of the duty.

[248] It has been argued, and authority has been cited supporting that argument, that the new beneficiaries have benefited by the delay, because, during the period of delay, the income distributable has been the income of the corpus undiminished by the amount ultimately paid out as estate duty; and, therefore, that the new beneficiaries should bear the burden of the interest payable on the estate duty. I agree with the argument in principle though not with the way in which that principle has sometimes been put into practice. [248]

The new beneficiaries are not responsible for the length of any delay that may occur in settling with the Collector of Estate Duties. If the amount be large and the investments of the trust estate be conservative ones the new beneficiaries, if they are made to refund the actual amount of interest paid to the Collector of Estate Duties, may be refunding much more than the additional income which they have received. The true position appears to me to be this: The estate duty is payable and ought to be paid at the moment of death; the corpus ought to have been diminished accordingly at that moment; and the income ought to have been proportionately reduced; what the new beneficiaries must be called upon to refund, therefore, is the difference between the income which they ought to have received, if estate duty has been paid punctually at the moment of death, and the income which has in fact been distributed to them between the date of the death and the date when estate duty was actually

paid. This amount the trustees can deduct from the payment or payments of income next due to be made to the new beneficiaries.

If the amount is not in fact equivalent to the amount of interest paid to the Collector of Estate Duties the benefit must accrue to, or the loss must fall on, that part of the corpus of the trust estate which is deemed to pass.

In reply to the 3rd, 4th and 5th questions on the summons, therefore, my directions are:—

(a) All sums paid or hereafter to be paid by the trustees as estate duty upon the cesser of any life interest under the will of the testator must be borne by and paid out of that portion of the corpus of the testator's residuary estate which is deemed to have passed.

(b) Any annuitant benefiting by the cesser of a life interest is not liable to pay any part of such estate duty but is liable to refund to the trustees the difference between the total amount of any income paid to him, between the date of death of any deceased annuitant and the date on which estate duty is actually paid in connection with such death, and the amount of income which should have been paid to him during that period had the estate duty been paid punctually on the date of such death; and the trustees may deduct such difference from any payment or payments of income next becoming due to the annuitant.

(c) Subject to recouping the estate to the extent of the repayments or deductions next beforementioned, any interest properly payable by the trustees to the Collector of Estate Duties shall be borne by and paid out of the corpus of that part of the residuary estate of the testator which is deemed to have passed.

Judgment accordingly.

Solicitors: *Braddell Bros.; Drew & Napier; Allen & Gledhill; Rodyk & Davidson.*

Re SYED HASHIM BIN KASSIM, DECD. late SULTAN OF SIAK
TUNGKU KECHIL MUDA SYED SAGOFF & ORS. v. SHERIFF KASSIM BIN HASHIM, SULTAN OF SIAK & ORS. (No. 2)

[O.C.J. (Adrian Clark J.) September 24, 1936]
[Singapore Suit No. 930 of 1922]

Settled Estates Ordinance, ss.4 and 27 — Permanent improvements — Against what found chargeable.

The costs of installing sanitary appliances when the Municipal Commissioners require such installations to be made constitute permanent improvements to the property and are payable wholly out of capital moneys; and this rule also applies to additional buildings placed on the land in order to enhance its value as a residential property and to obtain for it a better letting value.

Semble: this rule also applies in cases of substitution in dwelling houses of modern sanitation for the obsolete system previously in use, even though not under compulsion of the Municipal Commissioners.

ADJOURNED SUMMONS.

Laycock for all plaintiffs except No. 5 (life tenants).

Williamson for plaintiff No. 5 (a life tenant).

Munro for the trustees.

C. C. Tan for J. C. Cobbett, representative of remaindermen.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Adrian Clark J.: In this matter an application, by Summons No. 426 of 26th May, 1936, was made by the present trustees of the abovenamed estate, for various directions required in connection with its administration.

Other parties in the suit also took out a summons raising certain queries.

[249] As a result, orders of Court were made for enquiries by the Registrar and the Registrar has accordingly filed two certificates dated respectively 25th June and 16th July, 1936. [249]

By Summons No. 620 and Summons No. 623 of 27th July, 1936 application is now made by all the plaintiffs in the suit, except the 1st and 5th, that the certificates of the Registrar be varied on four points.

The submission underlying all these applications for variation is the same, namely, that the cost of certain building operations should be borne entirely out of capital.

In three instances the cost is that of installing sanitary installations in dwelling houses forming part of the trust estate.

In the fourth instance the cost is that of erecting a kitchen and motor shed in certain premises used as dwelling houses and forming part of the trust estate.

I think it is clear that the immovable property which the testator bequeathed in trust to the trustees is settled estate within the meaning of the Settled Estates Ordinance. Part of it has been sold by order of the Court and the proceeds are in the hands of the Accountant-General awaiting the further order of this Court as to their disposal.

The whole of the nett income of the trust estate is at present being enjoyed by a number of annuitants who are entitled to receive it in various shares until the period of distribution, which period is not likely to be reached for many years.

Under section 4 of the Settled Estates Ordinance these proceeds of sale may be dealt with by the Court in such manner as the Court or a Judge thinks best calculated to carry out the intentions of the settlor, and, subject thereto, with due regard to the interests of those intended to be benefited by the settlement.

Under section 27 of the Ordinance such proceeds of sale may be applied to the purpose, *inter alia,* of the permanent improvement of any immovable property subject to the settlement.

The enumeration of powers in section 27 is probably not meant to be exhaustive. Those in section 4(2) are certainly wider and, if necessary, the Court can resort to section 11 of the Courts Ordinance if it wishes to make any order not clearly covered by the authority given in the Settled Estates Ordinance.

The following cases were cited to me in the course of the argument:—

In re Houghton Estate, 30 Ch. D. 102; *In re de Teissier's Settled Estate,* [1893] 1 Ch. 153 at pp. 162 &c.; *In re Barney,* [1894] 3 Ch. 562; *In re Lever,* [1897] 1 Ch. 32; *In re Farnham's Settlement,* [1904] 2 Ch. 561; *Standing* v. *Gray,* [1903] Ir. Rep. 1 Ch. 49; and *Chang Kam Long* v. *Busfield & anor.,* [1932] S.S.L.R. 424; [1933] M.L.J. 293.